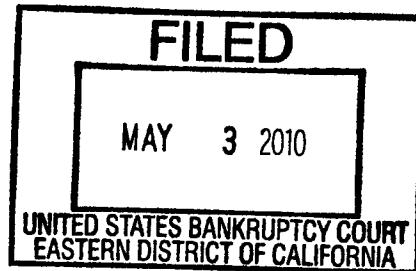


(A)



UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 10-20002-E-13
NANCY LOUISE BROWN,) Docket Control No. NLB-2
Debtor(s).)
_____)

(NOT FOR PUBLICATION)

**FINDINGS OF FACT
AND
CONCLUSIONS**

The Debtor having filed an *ex parte* Emergency Motion Requesting Immediate Order Pending Hearing ("Emergency Motion") requesting that the court issue an order extending the automatic stay, and the court having reviewed the Emergency Motion, supporting pleadings, and the files in this case, the court makes the Following Findings of Fact and Conclusions of Law in support of the order denying the *ex parte* Emergency Motion.

FINDINGS OF FACT

1. Nancy Louise Brown, the Debtor, ("Debtor") commenced the present voluntary Chapter 13 case on January 1, 2010.

2. The Debtor had commenced a prior Chapter 13 case on October 22, 2009, which was dismissed by the court on December 28, 2010. The prior case, No. 09-42922, was dismissed

1 upon a Motion to Dismiss filed by the Chapter 13 Trustee based
2 upon the Debtor having failed to file a standard form Chapter 13
3 Plan, Schedules A-J, Statement of Financial Affairs, and
4 Statement of Current Monthly Income and Disposable Income
5 Calculation, and the provisions of 11 U.S.C. §521(i)(1).

6 3. The Chapter 13 Plan proposed in this case by the Debtor
7 provided for payment of creditor claims from the proceeds
8 generated by the sale of the Debtor's home. The Plan provided
9 for payments of \$25.00 a month for the first three months of the
10 Plan, with the creditors to be paid in the fourth month of the
11 Plan from the sales proceeds.

12 4. Creditor Jacob Bar, as Trustee of the JPSL Barr, Inc.
13 Profit Sharing Retirement Trust, the holder of the third trust
14 deed secured by the Debtor's residence, commonly known as
15 1007 McCloud Avenue, Mt. Shasta, California, filed a motion for
16 relief from the automatic stay in the present case. In
17 opposition to the motion for relief from the automatic stay the
18 Debtor testified under penalty of perjury in a declaration filed
19 on February 18, 2010, to the following:

- 20 a. On January 26, 2010, the Debtor entered into a contract
21 to sell the 1007 McCloud property to Marty Wiz, the
holder of a fourth trust deed against said property.
- 22 b. The sales price is \$690,000.00, in "AS-IS" condition.
- 23 c. In the Debtor's opinion the real property has a value
24 of \$750,000.00, and is selling it for \$690,000.00 to
get a reasonably quick sale.
- 25 d. From Schedule D filed by the Debtor, the total liens
26 against the 1007 McCloud property are \$430,000.00. The
Debtor states in her declaration that Marty Wiz is only
required to "come up with" the balance of the purchase
price in excess of the liens on the property.

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1 Nancy Louise Brown Declaration, filed February 18, 2010, Docket
2 Entry No. 33.

3 5. In opposition to the Motion for Relief, the declaration
4 of Marty Wiz was filed by the Debtor. In his declaration, under
5 penalty of perjury, Mr. Wiz testified to the following:

- 6 a. On January 26, 2010, Mr. Wiz entered into a Contract
7 for Sale of the real property known as 1007 McCloud
Ave, Mt. Shasta, California.
- 8 b. The purchase price will be paid no later than 60 days
9 after the date of the contract.
- 10 c. Mr. Wiz was liquidating assets "which will allow me
11 [Marty Wiz] to pay that cash within 60 days; so there
is no need to seek new financing. I do have alternate
means of getting the money if need be."
- 12 d. Mr. Wiz opened an escrow for the purchase of the
13 property at Mt. Shasta Title & Escrow Company, and "I
14 [Mr. Wiz] have every intention of completing this
purchase on time."

15 Marty Wiz Declaration, filed February 18, 2010, Docket Entry
16 No. 34.

17 6. The court entered an order terminating the automatic
18 stay, effective April 30, 2010, to allow the creditor to
19 foreclose. Amended Minute Order for Relief, entered March 17,
20 2010, Docket Entry No. 57.

21 7. On March 3, 2010, the Debtor filed a Motion for Order
22 Allowing Debtor to Sell Real Property, Docket Entry 40. In this
23 motion the Debtor affirmatively states,

- 24 a. Escrow will close within 60 days of January 26, 2010.
- 25 b. Buyer is Marty Wiz, who is a stranger in blood to the
Debtor.
- 26 c. All debt owed to creditors holding liens and security
27 interests encumbering the property will be satisfied
before or simultaneously with the transfer of title or
28 possession of the property to the buyer.

1 8. The Debtor provided her declaration under penalty of
2 perjury in support of the motion to sell, in which she testified
3 to the following:

- 4 a. The Debtor has had a string of physical and financial
5 setbacks which have led to her financial predicament.
6 b. Debtor has reduced the price of the property, and has
7 received a non-continent offer to purchase the
8 property, with no brokers involved in the transaction.
9 c. The buyer is Marty Wiz, and escrow will close within
10 60 days of January 26, 2010.
11 d. All debts owed creditors with liens and security
12 interests encumbering the property will be satisfied
13 before or simultaneously with the transfer of title or
14 possession to the buyer.

15 9. The Debtor did not include a copy of the contract with
16 the motion to sell, but did attach a closing statement on
17 Mt. Shasta Title & Escrow Company letterhead.

18 10. In granting the motion to sell, the court stated its
19 findings of fact and conclusions of law in the Civil Minutes for
20 the March 23, 2010 hearing on the Debtor's motion to sell. The
21 findings include that the sale is to occur within 60 days of
22 January 26, 2010. Docket Entry No. 58.

23 11. In the present Emergency Motion the Debtor alleges the
24 following facts:

- 25 a. A foreclosure was scheduled on April 30, 2010, for the
26 1007 McCloud Avenue property. (The Emergency Motion
27 was filed on April 30, 2010.)
28 b. The Debtor is requesting an emergency stay to stop the
foreclosure pending a hearing.
c. Debtor's attorney did not file a request that the stay
be extended.
d. The Debtor's attorney "left the case" on April 29,
2010.
e. The Debtor is in *pro se*.

- 1 f. The Debtor filed bankruptcy to keep the foreclosing
- 2 creditor from taking the 1007 McCloud Avenue property
- 3 so that the Debtor could pay all of her creditors.
- 4 g. The Chapter 13 Trustee has filed a motion to dismiss
- 5 her case, which is set for hearing on June 29, 2010,
- 6 and that the stay should be extended to that date.

Emergency Motion Requesting Immediate Order Pending Hearing,
filed April 30, 2010, Docket Entry No. 76.

12. In support of the Emergency Motion, the Debtor has
provided her declaration under penalty of perjury, which merely
is a copy of the statements made in the Emergency Motion.

13. The Debtor has filed a second declaration in support of
a Motion to Modify Plan, Extend the Stay of Proceedings and
Remain Under the Protection of Chapter 13 Bankruptcy, which the
Debtor misidentified as being filed in her prior bankruptcy case
(Case No. 09-42922, Docket Control No. NLB-1). The court has
reviewed this additional testimony of the Debtor under penalty of
perjury, in which the Debtor states:

- 18 a. After refusing to file a Motion in Opposition to Relief
19 from Stay, the Debtor's attorney resigned from the
20 responsibility of representation, one day before the
21 April 30, 2010 foreclosure.
- 22 b. The Debtor has filed a complaint with the California
23 Department of Real Estate ("DRE") for which there is an
24 investigation concerning her complaints that Jacob Barr
25 engaged in predatory lending practices and other
26 illegal and/or unethical activities pertaining to the
27 alleged loan for which the April 30, 2010 foreclosure
28 is pending.
- 29 c. The Debtor has sent a loan cancellation to Jacob Barr.
- 30 d. A legal injunction is being prepared to be filed by the
31 Debtor against Jacob Barr.
- 32 e. The Debtor seeks a stay of proceedings in order to find
33 another attorney, modify her Chapter 13 Plan, and allow
34 the authorities to investigate her complaints against
35 Jacob Barr concerning the alleged obligation secured by

1 the 1007 McCloud Avenue property.

2 f. Failing to stay Mr. Barr from foreclosing would cause
3 irreparable harm to the Debtor and her creditors
4 because the 1007 McCloud Avenue property is the only
5 remedy for payment to the creditors.

5 Nancy Brown Declaration, filed April 29, 2010.

6 14. The Schedules and Statement of Financial Affairs filed
7 by the Debtor in the instant case, No. 10-20002, do not list any
8 claims or rights against Jacob Barr or the Barr Trust for which
9 he serves as the trustee. At no time prior to the April 30, 2010
10 Emergency Motion and the April 29, 2010 motion and declaration
11 filed in the wrong case, did the Debtor assert in the instant
12 case any claims against or disputes with Jacob Barr and the Barr
13 Trust. At all prior times the Debtor merely sought time to
14 complete the sale of the property to Marty Wiz.

15 15. No evidence or argument was submitted why the
16 1007 McCloud Avenue property has not been sold under the terms of
17 the non-contingent Sale Contract with Mr. Wiz within the 60-day
18 period from January 26, 2010, which is more than 30 days prior to
19 the April 30, 2010 termination of the automatic stay.

20 16. The Debtor repeatedly represented to the court and
21 parties in interest that the sale of the 1007 McCloud Avenue
22 property was not subject to any contingencies and would be sold
23 to provide for payment in full of creditor claims within the
24 proposed Plan four (4) month term.

25 **CONCLUSIONS OF LAW**

26 1. The automatic stay was terminated by the order on
27 April 30, 2010.

28 2. As of the filing of the Motion on April 30, 2010, no

1 automatic stay existed to be extended by the court.

2 3. The Debtor has not filed a motion to vacate the
3 March 17, 2010 order of the court terminating the automatic stay.

4 4. To the extent that the Emergency Motion is construed to
5 be a motion to vacate the March 17, 2010 order of the court, that
6 motion and supporting pleadings fail to establish a sufficient
7 basis for such relief under Rule 60, Federal Rules of Civil
8 Procedure, as made applicable to this bankruptcy case by
9 Rule 9024, Federal Rules of Bankruptcy Procedure. Zurich Am.

10 Ins. Co. v. International Fibercom, Inc., 503 F.3d 933, 940 (9th
11 Cir. 2007).

12 5. Stating that she now wishes to prosecute a heretofore
13 undisclosed complaint against Jacob Barr and the Barr Trust is
14 not adequate grounds under Rule 60(b) for vacating the order
15 terminating the automatic stay.

16 6. The Debtor not addressing the pending April 30, 2010
17 foreclosure sale until April 29, 2010, is not grounds to vacate
18 the order terminating the automatic stay.

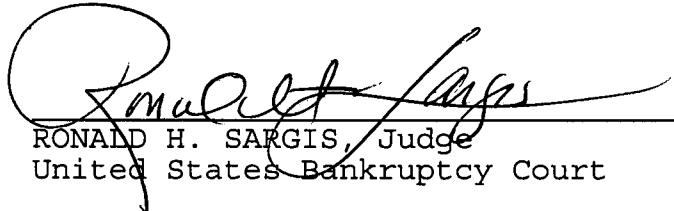
19 7. The Debtor changing counsel, which has not been allowed
20 by the court, on the eve of the April 30, 2010 foreclosure sale
21 is not grounds for vacating the order terminating the automatic
22 stay.

23 8. Stating that the foreclosure of the 1007 McCloud Avenue
24 property (four months after the filing of the present case and
25 six months after the filing of the prior bankruptcy case which
26 was dismissed for failing to file documents) is not sufficient
27 grounds for vacating the order terminating the automatic stay,
28 nor are they a showing of "irreparable harm" to creditors.

1 9. Upon termination of the automatic stay, a subsequent
2 stay issued by the court is properly made under Rule 7001
3 pursuant to an adversary proceeding, and not by motion brought in
4 the bankruptcy case. In re Gledhill, 76 F.3d 1070 (10th Cir.
5 1996); In re Wishon, 410 B.R. 295 (Bkcy OR 2009). No adversary
6 proceeding has been filed by the Debtor seeking such relief.

7 10. No substantive or proper procedural basis has been
8 shown for an entry of an order either vacating the order granting
9 relief from the automatic stay or the court issuing a new stay
10 relating to the foreclosure by the Barr Trust on the 1007 McCloud
11 Avenue property.

12 Dated: May 3 , 2010



RONALD H. SARGIS, Judge
United States Bankruptcy Court

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that a copy of the document to which this certificate is attached was mailed today to the following entities listed at the address shown on the attached list or shown below.

Nancy Louise Brown
1007 McCloud Ave
Mount Shasta, CA 96097

Clark D. Nicholas
1930 West St.
Redding, CA 96001

Lawrence J. Loheit
PO Box 1858
Sacramento, CA 95812-1858

DATED: 5/4/10

By: Barbara Reynolds
Deputy Clerk
BARBARA REYNOLDS

EDC 3-070 (New 4/21/00)